

Supplemental Environmental Projects Policy Fact Sheet

What a SEP is:

- A SEP is an environmentally beneficial project that is proposed by a defendant to be included as additional injunctive relief in an enforcement settlement.
- A SEP is voluntary – it cannot be required or compelled by EPA.
- A SEP is developed and implemented by a settling defendant using its own funds.
- A SEP is included in a settlement only if a defendant is interested in the project and it meets the legal and other criteria contained in EPA's SEP Policy.

What a SEP is not:

- A SEP is not a payment of money to a third party in lieu of penalties.
- A SEP cannot augment or supplement EPA's or another government agency's budget or program.
- A SEP cannot be directed, controlled, or managed by EPA.
- A SEP cannot be undertaken using federal loans, federal contracts, federal grants, or any other form of federal financial assistance or other federally-provided assistance.

Fundamentals of SEPs:

- In any negotiated enforcement settlement, initial penalty calculations may be adjusted for a variety of reasons, such as self-disclosure, cooperation, and a good faith effort to comply. At this point in negotiations, a defendant may propose a SEP to mitigate the initial penalty.
- Because performance of a SEP provides additional public health or environmental benefits as part of the settlement, the initial penalty may be adjusted downwards in recognition of the health or environmental benefits of the project, and the defendant's willingness to perform the additional work as part of the settlement.
- To ensure that EPA is appropriately exercising its enforcement discretion, to be included in a settlement a defendant's proposed project must meet a variety of legal requirements, including that there is a nexus, or connection, to the violation being resolved and the goals of the underlying statute, and compliance with federal "anti-augmentation" laws (Miscellaneous Receipts Act and the Anti-Deficiency Act), as well as opinions of the Comptroller General and applicable caselaw.
- Settlements with SEPs always include a final settlement penalty amount that retains its deterrent value – specifically, an amount that reflects the gravity or seriousness of the violation, and that recoups the unfair economic advantage that the defendant obtained over its law-abiding competitors in order to maintain a level playing field for those who remained in compliance.